

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KENESA DARLENE EVANS,)	CASE NO. 5:12 CV 2043
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
COMMISSIONER OF SOCIAL SECURITY,)	Magistrate Judge James R. Knepp II
)	
Defendant.)	MEMORANDUM OPINION
		<u>AND ORDER</u>

This matter is before the Court upon the Report and Recommendation of Magistrate Judge James R. Knepp II. (Document #24.) The Magistrate Judge recommends that the decision of the Commissioner be reversed and the case remanded, so that the ALJ may provide additional explanation for his RFC finding, taking into consideration relevant medical evidence demonstrating Plaintiff's condition after she ceased abusing drugs or alcohol. On August 11, 2010, Defendant Commissioner of Social Security filed a Response to Report and Recommended Decision (Docket #26), stating that an objection would not be filed.

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo.

FED. R. CIV. P. 72(b) states:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

Conclusion

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Knepp II (Docket #24) is ADOPTED. The decision of the ALJ is VACATED and the case REMANDED pursuant to 42 U.S.C. § 405(g), sentence four, for further proceedings consistent with the Report and Recommendation.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: September 19, 2013